

AN ACT

RELATING TO PUBLIC ASSISTANCE; CREATING THE EDUCATION WORKS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Education Works Act".

Section 2. DEFINITIONS.--As used in the Education Works Act:

A. "benefit group" means a group of people that includes a pregnant woman or at least one dependent child living with a parent, legal guardian or relative within the fifth degree of consanguinity or a pregnant woman;

B. "cash assistance" means cash payments funded by the education works fund;

C. "department" means the human services department;

D. "dependent child" means a natural or adopted child or ward who is eighteen years of age or younger;

E. "earned income" includes cash or payment in kind that is received as wages from employment or payment in lieu of wages; earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services; and all other income not classified

as unearned income;

F. "federal act" means the federal Social Security Act and rules promulgated pursuant to that act;

G. "federal poverty guidelines" means the level of income defining poverty by family size published annually in the federal register by the United States department of health and human services;

H. "household group" means a group of people that consists of a benefit group and any other person who resides in a household regardless of whether they are related or have a legal support responsibility for a member of the benefit group, but does not include:

(1) landlords;

(2) tenants; or

(3) members of a registered nonprofit

organization or church who provide shelter to a benefit group through a program sponsored by the nonprofit organization or church;

I. "landlord" means the owner of an estate in land or rental property who has leased it to another person called the tenant;

J. "parent" means natural parent, adoptive parent, stepparent or legal guardian;

K. "person" means an individual;

L. "recipient" means a person who receives cash

assistance or services pursuant to the Education Works Act;

M. "secretary" means the secretary of the department;

N. "services" includes child-care assistance; payment for education- or employment-related transportation costs; one-time payment per year for education costs funded by the education works fund;

O. "tenant" means a person who pays rent for the use and occupancy of real property owned by a landlord; and

P. "unearned income" includes old age, survivors' and disability insurance; railroad retirement benefits; veterans' administration compensation or pension; military retirement; pensions, annuities and retirement benefits; lodge or fraternal benefits; shared shelter payments; settlement payments; individual Indian money; and similar kinds of income.

### Section 3. APPLICATION.--

A. Application for cash assistance or services shall be made to the department's county office in the county or district in which an applicant resides. The application shall be in writing or reduced to writing in the manner and on the form prescribed by the department. The application shall be made under oath by an applicant having custody of or residing with a dependent child who is a household group member and shall contain a statement of the age of the child,

the child's residence, a complete statement of the amount of property in which the applicant has an interest, a statement of all income that he and other household group members have at the time of the filing of the application and other information required by the department.

B. At the time of application for cash assistance and services, an applicant shall identify household group members who are to be counted in the benefit group. Once an application is approved, the recipient shall advise the department if there are any changes in the membership of the household group or benefit group.

C. An applicant shall report to the department the names of all of the members of the applicant's household group or benefit group. A household group may contain more than one benefit group.

D. Not later than forty-five days after an application is filed, the department shall provide to an applicant a resource planning session to ascertain his immediate needs, assess financial and nonfinancial options, make referrals and act on the application.

E. The applicant shall immediately be referred to the children, youth and families department to apply for child-care services.

F. Whenever the department receives an application for assistance, a verification and record of the

applicant's circumstances shall promptly be made to ascertain the facts supporting the application and to obtain other information required by the department. The verification may include a visit to the home of the applicant, as long as the department gives adequate prior notice of the visit to the applicant.

G. The department shall meet semi-annually with a recipient to review the current financial eligibility of a benefit group and to review and revise his individual responsibility plan.

Section 4. ELIGIBILITY--RESTRICTIONS--REQUIREMENTS.--

A. A recipient is eligible if he demonstrates that:

(1) at the time of application he does not have a bachelor's degree;

(2) he has been accepted or has been determined to be eligible to enroll in a two- or four-year post-secondary degree program;

(3) he has the ability to succeed in the educational program that he has chosen; and

(4) the degree he will receive will increase his ability to engage in full-time paid employment.

B. A recipient shall not receive any cash assistance or services funded by the temporary assistance for needy families block grant.

C. A recipient shall apply for all financial aid available.

D. In the two years of the program, a recipient shall engage in at least twenty hours per week of class time, studying, work, work-study or volunteering. The department shall assume that a recipient spends one and one-half hours studying for every hour of class time.

E. If a recipient does not attend summer school full time, he shall engage in work for at least twenty hours per week. A recipient may continue to attend school during the summer session.

F. A recipient may participate in a program for no more than two years unless he demonstrates good cause for the following reasons:

(1) illness;

(2) caring for an aging parent or a special needs child; or

(3) a learning disability or other kind of mental or physical health problem.

G. At no time shall the number of recipients enrolled in the Education Works Act program exceed four hundred people.

H. A recipient may only earn one degree through the Education Works Act program.

I. For the purposes of this section, "work" means

work-study, training-related practicums, internships, paid employment, volunteering or any other activity approved by the department.

Section 5. FINANCIAL STANDARD OF NEED.--

A. The secretary shall adopt a financial standard of need based upon the availability of state funds.

B. The cash benefit level for a benefit group not living in government-subsidized housing or receiving government-subsidized housing payments shall be increased by an amount equal to that received by participants pursuant to the New Mexico Works Act.

C. The following income sources are exempt from the gross income test, the net income test and the cash payment calculation:

- (1) medicaid;
- (2) food stamps;
- (3) government-subsidized foster care and adoption payments;
- (4) supplemental security income;
- (5) government-subsidized housing or housing payments;
- (6) federally excluded income;
- (7) educational payments made directly to an educational institution;
- (8) government-subsidized child care;

(9) earned and unearned income that belongs to a person eighteen years of age or younger who is not the head of household;

(10) unearned income that belongs to the household group but not to the benefit group; and

(11) other income sources as determined by the department.

D. Earned income over one hundred thirty percent of the federal poverty guidelines that belongs to the household group but not to the benefit group is countable income. The department shall count the entire household group to determine family size when applying the federal poverty guidelines.

E. The department shall count the entire household group to determine family size when applying the financial standard of need. For a benefit group to be eligible to participate:

(1) gross countable earned income that belongs to the household group but not to the benefit group must not exceed one hundred eighty-five percent of the financial standard of need; and

(2) net countable earned income that belongs to the household group must not equal or exceed the financial standard after applying the disregards set out in Paragraphs (1) through (4) of Subsection F of this section.

F. Subject to the availability of state funds, the department shall determine the cash payment of the benefit group by applying the following disregards to the benefit group's earned gross income:

(1) one hundred fifty dollars (\$150) of monthly earned income and one-half of the remainder, or for a two-parent family, two hundred fifty dollars (\$250) of monthly earned income and one-half of the remainder for each parent;

(2) monthly payments made for child care at a maximum of two hundred dollars (\$200) for a child under two years of age and at a maximum of one hundred seventy-five dollars (\$175) for a child two years of age or older;

(3) costs of self-employment income; and

(4) business expenses.

G. The department may recover overpayments of cash assistance on a monthly basis not to exceed fifteen percent of the financial standard of need applicable to the benefit group.

#### Section 6. RESOURCES.--

A. Liquid and nonliquid resources owned by the household group but not the benefit group shall not be counted in the eligibility determination.

B. A benefit group may at a maximum own the following resources:

(1) two thousand dollars (\$2,000) in nonliquid resources;

(2) one thousand five hundred dollars (\$1,500) in liquid resources;

(3) the value of the principal residence of the recipient;

(4) the value of burial plots and funeral contracts for family members;

(5) the value of work-related equipment up to one thousand dollars (\$1,000);

(6) in areas without public transportation, the value of one motor vehicle for each recipient enrolled in a bachelor's degree program; and

(7) in areas with public transportation, the value of one motor vehicle.

Section 7. INELIGIBILITY.--The following are ineligible to be members of a benefit group:

A. an inmate or patient of a nonmedical institution;

B. a person who, in the two years preceding application, assigned or transferred real property unless he:

(1) received or receives a reasonable return;

(2) attempted to or attempts to receive a reasonable return; or

(3) attempted to or attempts to regain title to the real property;

C. a minor child who has been absent or is expected to be absent from the home for forty-five days;

D. a person who does not provide a social security number or who refuses to apply for one;

E. a person who is not a resident of New Mexico;

F. a person who fraudulently misrepresented residency to receive assistance in two or more states simultaneously except that such person shall be ineligible for only ten years;

G. a person who is a fleeing felon or a probation and parole violator;

H. a person concurrently receiving supplemental security income, tribal temporary assistance for needy families, bureau of Indian affairs general assistance or adoption subsidies; and

I. a parent who does not assist the department in establishing paternity or obtaining child support or who does not assign support rights to New Mexico, unless he demonstrates good cause.

Section 8. FAIR HEARING--REVIEW AND APPEAL.--

A. A recipient may request a hearing if:

(1) an application is not acted on within a reasonable time after the filing of the application;

(2) an application is denied in whole or in part; or

(3) the cash assistance or services are modified, terminated or not provided.

B. The department shall notify the recipient of his rights under this section.

C. The department shall by rule establish procedures for the filing of a request for a hearing and the time limits within which a request may be filed; provided, however, that the department may grant reasonable extensions of the time limits. If the request is filed in a timely manner, cash assistance and services shall be provided until the appeal is resolved. If the request is not filed within the specified time for appeal or within whatever extension the department may grant, the department action is final. Upon receipt of a timely request, the department shall give the recipient reasonable notice of an opportunity for a fair hearing in accordance with the rules of the department.

D. The hearing shall be conducted by a hearing officer designated by the director of the income support division of the department. The powers of the hearing officer shall include administering oaths or affirmations to witnesses called to testify, taking testimony, examining witnesses, admitting or excluding evidence and reopening a hearing to receive additional evidence. The technical rules

of evidence and the rules of civil procedure shall not apply. The hearing shall be conducted so that the contentions or defenses of each party to the hearing are amply and fairly presented. Each party may be represented by counsel or other representative and may conduct cross-examination. Oral or documentary evidence may be received, but the hearing officer may exclude irrelevant, immaterial or unduly repetitious evidence.

E. The director of the income support division shall review the record of the proceedings and shall make his final decision on the record. The recipient or his representative shall be notified in writing of the director's final decision and the reasons for the decision. The written notice shall inform the recipient of his right to judicial review pursuant to Section 39-3-1.1 NMSA 1978. The department shall be responsible for ensuring that the decision is enforced.

F. A recipient may appeal the final decision of the director of the income support division to district court pursuant to Section 39-3-1.1 NMSA 1978.

G. The department shall not authorize or allow expenditures in excess of the amounts previously appropriated by the legislature.

Section 9. SATISFACTORY PARTICIPATION.--

A. To maintain satisfactory participation, a

recipient shall meet the standard of the school that he attends.

B. If a recipient falls below the standard of the school in one semester, then he will be placed on probationary status for one semester to improve his grades. If a recipient's overall grade point average falls below 2.0, the department shall place him on a maximum of two probationary semesters to bring up the overall grade point average.

C. A recipient shall:

(1) attend classes as scheduled and participate as required by the school;

(2) report to the department anything that might affect his ability to participate in the Education Works Act program;

(3) provide the department with a copy of financial aid award letters; and

(4) provide the department with copies of his grades as they become available.

D. If a recipient does not comply with Subsection C of this section, the department may require the recipient to apply for public assistance pursuant to the New Mexico Works Act. This decision shall be made in writing, and the recipient shall have the opportunity to appeal it.

